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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,243	10/04/2005	Sjoerd Gerard Vrijburg	4828-050784	2866
28289 7590 12/23/2009 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				
EXAMINER				
PATEL, TAJASH D				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
12/23/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,243

Applicant(s)

VRIJBURG, SJOERD GERARD

Examiner

Tejash D. Patel

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/226)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 17-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 17, the recitation "including at least one rigid portion which can cause irritation to the skin" is indefinite since it is unclear why a device would want to create irritation that would be uncomfortable when the device is worn. Further, the specification mentions that the device prevents irritation instead of creating it. It is suggested that Applicant amend the claims as supported by the specification. Correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 17-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce (US 4,756,026).

Pierce discloses a device (50) worn about the leg including a protective body (12) with under and upper sides being made of a elastic sleeve (56), col. 5, lines 35 that has a recess for placing on the front side of a leg as shown in figure 5. The protective body wholly encloses the leg as seen in the horizontal direction with the underside defining a recess through which the foot is inserted therethrough and is positioned adjacent to the skin as also shown in figure 5. Also, the device includes two support foam members (62,64,66) secured to the elastic sleeve which are substantially on either side of a front side thereof as shown in figures 1 and 3. Further, the body extends above the foot in a vertical direction as shown in figure 5.

It would have been obvious to one skilled in the art at the time the invention was made to recognize that elastic sleeve of Pierce having foam support members will be form fitting while preventing irritation to the skin when the device is worn or depending on the end use thereof.

It would have been obvious that one of the support foam member of Pierce can be made of the resilient material such as plastic, neoprene, rubber etc. since such material have a certain degree of resiliency that is similar to one another as known in the art.

With regard to claim 23, it is obvious that the support members of Pierce has varying thickness due to stretchable properties of the elastic material.

With regard to claim 31, it is obvious that the device of Pierce wholly worn about the leg defined a tubular sleeve is conventionally formed by a substantially vertical seam as known in the textile art.

Further, with regard to claim 32, it would have been obvious to provide the protective body of Pierce can be provided with indicia or marking thereon as a matter of design choice or depending on the end use thereof.

Response to Amendment

5. The amendment and arguments filed on September 16, 2008 has been considered. In view of such, the amendment has prompted this office action is being made FINAL. The Applicant amendment reciting that the "rigid portion can cause irritation to the skin" contradicts the specification that prevents skin irritation as discussed above. Applicant argues that Pierce '026 does not provide a device placed between a snug fit member and the skin. The examiner respectfully disagreed in light of the amended claims the device of Pierce structurally discloses an elastic sleeve having foam members that is capable of forming a snug fit about the body while preventing irritation.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

December 18, 2009

/Tejash Patel/
Primary Examiner